IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 109/2005

State of Goa. ..... Appellant.

V/s.

Preeti Engineering Services
Represented by Sole Proprietor. ..... Respondent.

Mr. S. R. Rivonkar, Government Advocate for the appellant.

CORAM : R.M. LODHA, J.

DATE : 20TH OCTOBER, 2005.

P.C.

Mr. S.R. Rivonkar, the learned Government Advocate submits that this first appeal is confined to the grievance of the appellant with regard to the rate of interest awarded by the learned trial Court. He submits that the interest ought not to have been awarded at the rate of 10 % per annum. According to him, the interest could have only been awarded at the rate of 6 % per annum. He relies upon Section 34 of the Code of Civil Procedure and the Division Bench Judgment of this Court in the case of **Satara Zilla Parishad, through its Chief Executive Officer v. Dilip Bhaushaheb Pawar ,** 2002 (Supp.) Bom. C.R. 81.

2. I considered the submissions of the learned Government Advocate .

3. The first appeals are ordinarily admitted as a matter of course. However, I find that the first appeal is totally frivolous and of no substance. As a matter of fact, by filing this first appeal, the State Government has unnecessarily spent on litigation expenses which ought to have been avoided.

4. The respondent herein filed the suit against the present appellant (the parties, hereinafter, to be referred as `the plaintiff' and 'the defendant' respectively) for recovery of money. According to the plaintiff, it is a commercial establishment dealing mainly in the execution of works of civil construction. For its civil project known as Construction of D-2 Distributory Canal of Selaulim Irrigation Project from Chainage 6090 to Chainage 6725 metres at Davorlim Village of Salcete Taluka (balance work), the defendant awarded a contract to the plaintiff . For the work that was done by the plaintiff, an amount of Rs.25,50,922.50 was due and payable by the defendant. The defendant, however, paid a sum of Rs.24,99,582/- and thereby, a sum of Rs.51,340.50 remained due and payable. In the suit, thus, the plaintiff claimed the balance amount of Rs.51,340.50 with interest at the rate of 12 % per annum.

5. The claim was contested by the defendant and plea was set up that the plaintiff did not complete the work in time. The preparation and processing of the final bill for the work done by the plaintiff remained pending because of non-cooperative attitude of the plaintiff.

6. On the basis of the pleadings of the parties, four issues were raised. After recording the evidence, the Trial Court held that the plaintiff was able to prove that the defendant was liable to pay remaining balance sum of Rs.51,340.50. Having held so, the Trial Court awarded interest at the rate of 10 % per annum from 01.08.1997 on the principal sum of Rs.51,340.50 until date of realisation.

7. The award of interest pendente lite and post decree is discretionary and it is essentially governed by Section 34 of the Code of Civil Procedure. While awarding interest at the rate of 10 %, the trial Court considered the Judgment of the Supreme Court in the case of **Central Bank of India v. Ravindra and others**, AIR 2001 SC 3095 and also the Judgment of the Supreme Court in the case of **State of J & K v. Dev Dutt Pandit**, AIR 1999 SC 3196. The trial Court observed that having regard to all the relevant factors, namely the nature of project (commercial) carried out by the plaintiff, the completion work by the plaintiff, the normal rate of interest subsisting and further having due regard to the fact that the defendant prevented

the plaintiff from use of legally entitled sum of Rs.51,340.50 from 01.08.1997, the award of interest at the rate of 10 % per annum was fair and reasonable.

8. The discretion exercised by the Trial Court cannot be said to suffer from any legal infirmity.

7. The Judgment in the case of **Satara Zilla Parishad (supra)** relied upon by the Government Advocate does not help the case of the appellant at all. As a matter of fact, the Division Bench in that case held that the pendente lite interest can exceed 6 % (in that case it was 9 %). As regards the post decree period, the Division Bench observed, that if the transaction was commercial, award of interest at the rate of 9 % would not be unjustified. Since in that case the transaction was not found to be commercial, the Division Bench modified the rate of interest from 9 % to 6 % for the period from the date of decree until realisation. The pendente lite interest @ 10 % upto 26.11.2004, thus, cannot be faulted. With regard to post decree interest, suffice it to observe that the transaction between the parties was commercial (the plaintiff being a commercial establishment which undertook the project of civil work for the defendant), there was no illegality on the part of the Trial Court in awarding interest at the rate of 10 %. Even, otherwise, the post decree differential amount of interest, if the argument of the

Government Advocate is accepted that it should have been only 6 % per annum, would not even exceed a couple thousand rupees. The State Government has unnecessarily spent the money on avoidable litigation towards typing, Government Advocate's fee and other miscellaneous expenditure. The Law Department of the Government of Goa should scrutinise the matters thoroughly before it advises the concerned department to go in for appeal. It must ensure that the appeals are filed in meritorious cases only and public money is not unnecessarily spent on avoidable litigation.

10. First appeal is wholly frivolous and is dismissed in limine.

R.M. LODHA, J.

ssm.